

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA and  
THE STATE OF INDIANA,

Plaintiffs,

MARATHON OIL COMPANY,  
MARATHON ASHLAND PIPE LINE LLC,

Defendants.

Civil Action No.

**2:05-cv-0090-LJM-WGH**

**CONSENT DECREE**

**I. INTRODUCTION**

A. The United States of America ("United States"), on behalf of the Secretary of the United States Department of the Interior, Fish and Wildlife Service, and the State of Indiana ("State"), on behalf of the Indiana Department of Environmental Management ("IDEM") and the Indiana Department of Natural Resources ("DNR"), filed a Complaint in this action against Marathon Oil Company and Marathon Ashland Pipe Line, LLC ("Settling Defendants") pursuant to the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 *et seq.* The Complaint seeks damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, controlled by or appertaining to the United States or the State, as trustees for those resources, including the cost of assessing such injury, resulting from discharges of oil or other petroleum products from pipelines owned or operated by Settling Defendants in and around Rosedale, Catlin and Daylight, Indiana on August 24, 1997, March 30, 1999, and April 7, 1999, respectively.

90-5-11-4150/1

B. The United States, the State, and Settling Defendants (collectively, the "Parties") have agreed that it is appropriate for Settling Defendants to resolve their alleged liability for natural resource damages arising from the discharges described in the Complaint by conveying certain property defined and described below as the "Rosedale Property" to the DNR for the purpose of restoration, rehabilitation, replacement, or acquisition of equivalent, natural resources injured as a result of discharges or threatened discharges of oil or other petroleum products as alleged in the Complaint. The Trustees believe, based on information and conditions known to the Trustees prior to the date this Consent Decree is entered, that Settling Defendants' obligations under this Consent Decree constitute adequate compensation for natural resource damages arising from the discharges described in the Complaint. The DNR commits to preserving the Rosedale Property for the benefit of fish and wildlife, and commits not to use the Rosedale Property in a manner incompatible with the preservation of its habitat values.

C. The Parties believe, and the Court finds, that this Consent Decree has been negotiated by the Parties in good faith; is fair, reasonable, and in the public interest; will expedite restoration, replacement, or acquisition of the equivalent of the natural resources that the United States and the State assert have been injured, destroyed, or lost; and will avoid prolonged, difficult, expensive and complicated litigation. The Parties agree that neither this Consent Decree, nor any part hereof, nor entry into, nor any performance under this Consent Decree by Settling Defendants, shall constitute or be construed as a finding or admission or acknowledgment of the factual or legal statements contained in this Consent Decree, or of any liability, fault, or wrongdoing, or evidence of such, or an admission of violation of any law, rule, regulation or policy, by Settling Defendants or by their officers, directors, employees, agents, successors, or assigns, nor shall this Consent Decree nor any performance hereunder by Settling Defendants create any rights on behalf of any person not a party

hereto. Neither the fact that a Party has entered into this Consent Decree, nor any of the factual allegations herein, shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the Parties to this Consent Decree.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 33 U.S.C. §§ 1321, 2717(b). This Court also has personal jurisdiction over the Parties. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and 33 U.S.C. § 2717(b).

## **III. PARTIES BOUND**

2. This Decree shall inure to the benefit of and be binding upon the United States and the State and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of Settling Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendants' responsibilities under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise defined herein, terms used in this Decree, which are defined in OPA or CWA, or in regulations promulgated pursuant to OPA or CWA, shall have the meaning assigned to them therein.

"Consent Decree" shall mean this Consent Decree and Appendix A, attached hereto.

"CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

"Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next working day.

"DOI" shall mean the United States Department of the Interior and any successor departments or agencies of the United States.

"Donated Property" shall mean property comprising approximately 45.66 acres more particularly described as Parcel II by the property description attached as Appendix A to this Consent Decree, and generally depicted as Parcel II on the maps attached as Appendix A to this Consent Decree. Settling Defendants have agreed to convey the Donated Property as a donation under Paragraph 7 of this Consent Decree.

"DNR" shall mean the Indiana Department of Natural Resources and any successor departments or agencies of the State of Indiana.

"IDEM" shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State of Indiana.

"Natural Resources" shall mean such resources as defined in Section 1001 (20) of OPA, 33 U.S.C. § 2701 (20).

"Natural Resource Damages" shall mean "damages" as defined in Section 1002 (b)(2)(A) of OPA, 33 U.S.C. § 2702 (b)(2)(A).

"OPA" shall mean the Oil Pollution Act of 1990, as amended, 33 U.S.C. §2701 *et seq.*

"Parties" shall mean the United States, the State, and Settling Defendants.

"Rosedale Property" shall mean property comprising approximately 56.64 acres of riparian flood plain habitat more particularly described as Parcel I by the property description attached as

Appendix A to this Consent Decree, and generally depicted as Parcel I on the maps attached as Appendix A to this Consent Decree.

"Settling Defendants" shall mean: Marathon Oil Company, an Ohio corporation; and Marathon Ashland Pipe Line, LLC, a Delaware corporation.

"State" shall mean the State of Indiana, on behalf of the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

"Trustees" shall mean the Secretary of the United States Department of the Interior, acting through the Fish and Wildlife Service, and the duly designated officials of IDEM and DNR, and each shall be a "Trustee."

"United States" shall mean the United States of America, on behalf of the United States Department of the Interior.

## **V. GENERAL PROVISIONS**

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are: to provide for the restoration, replacement, or acquisition of the equivalent of Natural Resources allegedly injured, destroyed, or lost as a result of the discharges of oil or other petroleum products described in the Complaint; to compensate the public for interim losses resulting from such injured, destroyed, or lost natural resources; and to resolve Settling Defendants' liability for Natural Resource Damages as provided herein. The DNR commits to preserving the Rosedale Property for the benefit of fish and wildlife, and commits not to use the Rosedale Property in a manner incompatible with the preservation of its habitat values. A further objective is to convey the Donated Property for fish and wildlife purposes.

5. Compliance with Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of applicable federal and state laws and regulations.

#### **VI. CONVEYANCE OF INTERESTS IN PROPERTY**

6. Marathon has submitted to the State draft warranty deeds which shall provide for the conveyance of the Rosedale Property and the Donated Property to the DNR.

7. Within 15 days after entry of this Consent Decree or after approval of the draft warranty deeds by the State, whichever is later, Marathon shall cause the approved warranty deeds to be delivered to the DNR, with a copy to the United States and IDEM. If satisfactory title to the Rosedale Property cannot be conveyed to the DNR or other acceptable entity, or if the conveyance is rejected by the State or otherwise is not feasible, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the parties.

#### **VII. PAYMENTS**

8. Within thirty (30) days of entry of this Decree, Settling Defendants shall pay the following amounts as reimbursement for costs incurred by the Natural Resource Trustees in assessing the damages to natural resources resulting from the discharges of oil or other petroleum products referred to in the Complaint:

\$14,244.93 to the United States;

\$7,267.31 to Indiana Department of Environmental Management;

\$2,707.86 to Indiana Department of Natural Resources.

In addition, within thirty (30) days of entry of this Decree, Settling Defendants shall donate \$5,779.90 to the Trustees for future restoration activities by the Trustees on the Rosedale Property and the Donated Property.

9. Method of Payment. The payments required pursuant to Paragraph 8, above, shall be made as provided below:

For the United States:

Payment in the amount of \$20,024.83, representing \$14,244.93 in assessment costs incurred by DOI and \$5,779.90 donated to the Trustees for future restoration activities on the Rosedale Property and the Donated Property shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Indiana following lodging of the Consent Decree. The payments must reference: NRDAR Account No. 14X5198; the Marathon Rosedale, Marathon Catlin, and Marathon Daylight Sites; U.S. DOJ Case No. 90-5-1-1-4150/1; and the U.S. Attorney's Office No. 2004V00197. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, Settling Defendants shall also send notice that payment has been made to DOI and DOJ in accordance with Paragraph 11 (Notice of Payments). Such notice shall reference the DOJ case number 90-5-1-1-4150/1, the U.S. Attorney's Office No. 2004V00197, and the civil action case name and case number.

For the Indiana Department of Environmental Management:

Payment may be made by wire transfer by directing the payment to:

National City Bank  
"State of Indiana, Treasurer of State, Attn: IDEM"  
ABA Routing No. 074000065  
Account No.009014424

At least forty-eight (48) hours prior to the date of the wire transfer of funds, Settling Defendants shall notify Vickie Wiley by fax at (317) 232-5539, and by telephone call at (317) 233-0606. Failure to notify at least forty-eight hours in advance of the date certain for the wire transfer will result in the payment reverting to the general funds of the State of Indiana. IDEM will not recognize funds wired by Settling Defendants without prior notification to ensure credit to the appropriate account.

For the Indiana Department of Natural Resources:

Payment may be made by wire transfer by directing the payment to:

National City Bank  
"State of Indiana, Treasurer of State, Attn: IDNR"  
ABA Routing No.074000065  
Account No.009014424

Forty-eight (48) hours prior to the date of the wire transfer of funds, Settling Defendants shall notify the Division of Fish and Wildlife by telephone call at (317)232-4080. Failure to notify forty-eight hours in advance of the date certain for the wire transfer will result in the payment reverting to the general funds of the State of Indiana. DNR will not recognize funds wired by Settling Defendants without prior notification to ensure credit to the appropriate account.

10. Late Payments. In the event Settling Defendants fail to make timely payments of any amounts required under this Consent Decree, Settling Defendants shall be liable for interest on the unpaid balance at the rate specified in Section 1005 of OPA, 33 U.S.C. § 2705. The interest shall be calculated from 30 days of entry of this Consent Decree until the entire outstanding balance has been received.

11. Notice of Payments. For all payments required to be made by Settling Defendants under this Consent Decree, Settling Defendants shall send, at the time payment is made, documentation of payment to each of the following:

For the United States:

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
DJ #90-5-1-1-4150/1  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044-7611

Field Supervisor  
United States Fish & Wildlife Service  
Bloomington Field Office  
620 S. Walker Street  
Bloomington, IN 47403-2121



Department of the Interior  
Natural Resource Damage Assessment  
And Restoration Program  
Attn: Fund Manager  
1849 C Street, N.W.  
Mailstop 4449  
Washington, D.C. 20240

For the State of Indiana:

Timothy J. Junk  
Deputy Attorney General  
Indiana Government Center South  
402 W. Washington Street, 5th Floor  
Indianapolis, IN 42604

### **VIII. STIPULATED PENALTIES**

12. In addition to any Interest, the Defendants shall pay stipulated penalties to the United States and the State for each failure to comply with Section VI or Section VII of this Consent Decree, except with regard to the Donated Property. Any stipulated penalties paid pursuant to this Section shall be in addition to the payment required pursuant to Section VII, Paragraph 8 and shall be payable to, and split between the United States and the State in the manner instructed by the governments. Settling Defendants shall pay the following total amounts per day for each day of violation:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$2,000.00
15th through 44th day	\$3,000.00
45th day and beyond	\$5,000.00

13. All stipulated penalties owed to the United States and the State shall be due and payable within thirty (30) days of Settling Defendants' receipt from either the United States and/or the State of a demand for payment of the stipulated penalties.

14. All stipulated penalties begin to accrue on the day that complete performance is due or a violation of the Consent Decree occurs, and continue to accrue through the final day of the correction of the non-compliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Following the United States' or the State's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, the State or the United States will notify Settling Defendants and describe the noncompliance. However, penalties shall accrue as provided in this Paragraph regardless of whether the Settling Defendants have been notified of a violation.

15. All payments under this Section shall be made in the form of a certified check or checks and made payable to the United States and the State in the manner instructed by the governments.

16. If Settling Defendants fail to pay stipulated penalties when due, the United States and the State may institute proceedings to collect the penalties, as well as any Interest associated thereto. In addition, Settling Defendants shall be liable for attorney's fees and costs incurred by the United States and the State associated with the collection of stipulated penalties.

## **IX. INDEMNIFICATION**

17. The United States and the State do not assume any liability by entering into this agreement or by virtue of any activities to be performed by Settling Defendants under this Consent Decree. Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this

Consent Decree. Further, Settling Defendants agree to pay the United States and the State all costs incurred including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, subcontractors, and any persons acting on Settling Defendants' behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any contractor hired by Settling Defendants shall be considered an agent of the United States or the State.

#### ***X. FORCE MAJEURE***

18. "*Force majeure* event" is defined as any event arising from causes beyond the control of Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. Best efforts to fulfill the obligation includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event (1) as it is occurring, and (2) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. Financial inability to fulfill any obligations under this Consent Decree does not constitute a *force majeure* event.

19. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a *force majeure* event, Settling Defendants shall notify the United States and the State within ten (10) days of when Settling Defendants first knew or should have known that the event might cause a delay. Within thirty (30) days thereafter,

Settling Defendants shall provide a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and the rationale for attributing such delay to a *force majeure* event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of *force majeure* for that event. Settling Defendants shall be deemed to have notice of any circumstances of which their contractors or subcontractors had or should have had notice.

20. If the United States and the State agree that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Consent Decree that are affected by the *force majeure* event will be extended by the United States and the State for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If the United States and the State do not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, Settling Defendants will be notified of that decision in writing.

## **XI. DISPUTE RESOLUTION**

21. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree and its Appendix. The procedures set forth in this Section shall not apply to actions by the United States or the State to enforce Settling Defendants' obligations that have not been disputed in accordance with this Section.

22. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. Informal

negotiations cannot exceed 20 days from the time a dispute arises, unless modified by written agreement of the Parties to the dispute. A dispute is considered to have arisen when one Party sends the other parties a written Notice of Dispute.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within 10 days after the conclusion of the informal negotiations period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the Trustees a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, the Trustees will serve on Settling Defendants their Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees.

c. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 22(a), the Trustees, or a properly designated representative will issue a final decision resolving the dispute. The Trustees' decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and/or the State may file a response.

d. Judicial review of any decision of the Trustees governed by this Paragraph shall be limited to the statements of position of the Parties and the accompanying supporting documentation. The scope of review shall be limited to whether substantial evidence supports the Trustees' decision.

23. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligations of Settling Defendants under this Consent Decree not directly in dispute, unless the Trustees or the Court determines otherwise.

## **XII. COVENANTS NOT TO SUE BY UNITED STATES AND STATE**

24. In consideration of the actions that will be performed by Settling Defendants under the terms of this Consent Decree, and except as provided in Section XIII of this Consent Decree (Reservation of Rights by the United States and the State), the United States and the State covenant not to sue or to take administrative action against Settling Defendants for Natural Resource Damages arising from the discharges of oil or other petroleum products referred to in the Complaint. These covenants not to sue shall take effect upon conveyance of the Rosedale Property pursuant to Paragraph 7 of this Consent Decree and payment of all costs pursuant to Section VII of this Consent Decree. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person; provided, however, that this covenant not to sue (and the reservations thereto) shall also apply to Settling Defendants' officers, directors, employees, successors and assigns, except to the extent that the alleged liability of that person or entity arose independently of the alleged liability and actions of Settling Defendants.

### **XIII. RESERVATIONS OF RIGHTS BY THE UNITED STATES AND THE STATE**

25. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action for injunctive relief, costs, or damages for Natural Resource Damages, or the restoration, replacement, or acquisition of the equivalent of injured, destroyed, or lost Natural Resources resulting from the releases or threatened release of oil or other petroleum products referred to in the Complaint, if, after entry of this Consent Decree: (1) conditions pertaining or resulting from the discharges previously unknown to the Trustees are discovered; or (2) information relating to the discharges is received by the Trustees and the new information indicates that the discharges referred to in the Complaint resulted in injury to, destruction of, or loss of Natural Resources of a type unknown to the Trustees at the time of entry of this Consent Decree.

a. For purposes of this Section XIII, an increase solely in the Trustees' assessment of the magnitude of the injury, destruction, or loss to Natural Resources, or in the estimated or actual Natural Resource Damages resulting therefrom, shall not be considered to be unknown conditions or new information.

b. For purposes of this Section XIII, the information and conditions known to the Trustees shall include only that information and those conditions known to the Trustees prior to the date the Consent Decree is entered.

26. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 24. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Defendants to meet a requirement of this

Consent Decree;

b. liability for any corrective action, response activity, response costs, or any other cleanup or regulatory action relating to the discharges referred to in the Complaint pursuant to the Resource Conservation and Recovery Act, CERCLA, the Clean Water Act, or any other applicable federal or state law as a result of the discharge or threatened discharge of oil or other petroleum products or any hazardous substance, excluding (whether recoverable in monetary damages or injunctive relief) liability for Natural Resource Damages and liability for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the injured, destroyed, or lost Natural Resources resulting from discharges or threatened discharges of oil or other petroleum product or hazardous substances at areas affected by the discharges referred to in the Complaint arising from conditions existing at such areas prior to entry of this Consent Decree;

c. liability arising from the past, present, or future disposal, discharge, or threat of discharge of oil or other petroleum products or hazardous substances other than the discharges referred to in the Complaint;

d. liability arising from any new release (after entry of this Consent Decree) of oil or other petroleum product or hazardous substances at areas affected by the discharges referred to in the Complaint;

e. liability for any matter for which the United States or the State is owed indemnification under Section IX of this Consent Decree;

f. criminal liability; and

g. liability for violations of federal or state law which occur after entry of this Consent Decree.



#### **XIV. COVENANTS BY SETTLING DEFENDANTS**

27. Settling Defendants hereby covenant not to sue, and agree not to assert any claims or causes of action, against the United States or the State under the CWA, OPA, or any other federal or state law or regulation with respect to this Consent Decree, the discharges referred to in the Complaint, or response activities in connection with such discharges, including without limitation, any direct or indirect claim for reimbursement under any provision of federal or state law.

28. Waiver of Claims Against Other Persons Relating to Natural Resource Damages.  
Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have against all other persons for all matters relating to Natural Resource Damages, including for contribution; provided, however, that Settling Defendants reserve the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against Settling Defendants relating to Natural Resource Damages.

#### **XV. EFFECT OF SETTLEMENT**

29. Except as specifically provided by Paragraph 28 (Waiver of Claims Against Other Persons Relating to Natural Resource Damages), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a signatory to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a party to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the discharges referred to in the Complaint against any person not a Party hereto.

30. In any subsequent administrative or judicial proceeding initiated by the United States or the State for enforcement of the terms of this Consent Decree, injunctive relief, recovery of response costs, or other appropriate relief relating to the discharges referred to in the Complaint, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, and claim splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; providing, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue set forth in Paragraph 24.

#### **XVI. NOTICES AND SUBMISSIONS**

31. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or any other document is required to be sent by one Party to another, it shall be directed to individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the State, and Settling Defendants, respectively.

##### **As to the United States:**

For the U.S. Department of Justice:

Chief, Environmental Enforcement Section  
Re: DJ# 90-5-1-1-4150/1  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

For the U.S. Department of Interior:

Regional Director

U.S. Fish and Wildlife Service  
Bishop Henry Whipple Federal Building  
1 Federal Drive  
Fort Snelling, MN 55111

As to the State:

For the Indiana Attorney General's Office:

Timothy J. Junk, Deputy Attorney General  
Indiana Attorney General's Office  
Indiana Government Center South  
402 West Washington Street, Fifth Floor  
Indianapolis, IN 46204

For the Indiana Department of Natural Resources:

Indiana Department of Natural Resources  
ATTN : John Davis, Deputy Director  
DNR, Indiana Government Center South, Room 256C  
402 West Washington Street  
Indianapolis, IN 46204

For the Indiana Department of Environmental Management:

Indiana Department of Environmental Management  
Office of Legal Counsel  
ATTN : Beth Admire, Program Counsel Section Chief  
100 N. Senate Avenue  
P.O. Box 6015  
Indianapolis, IN 46206-6015

As to Settling Defendants:

Edward A. Strenkowski  
Senior Counsel  
Human Resources & Environmental Group  
Marathon Oil Company  
5555 San Felipe (77056-2725)  
Houston, TX 77056-2725

## **XVII. APPENDIX**

32. This Consent Decree and its Appendix A, constitute the entire understanding of the Parties with respect to the subject matter. The following appendix is attached to and incorporated into this Consent Decree:

" Appendix A " consists of maps generally depicting the Rosedale Property and the Donated Property and legal descriptions of the Rosedale Property and Donated Property.

## **XVIII. MODIFICATION**

33. This Consent Decree may be modified by written agreement of the Parties, subject to Court approval.

34. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

## **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

35. This Consent Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

36. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State has notified Settling Defendants in writing that it no longer supports the Consent Decree.

37. If, for any reason, the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any signatory and the terms of the agreement may not be used as evidence in any litigation between the Parties hereto.

## **XX. SIGNATORIES/SERVICE**

38. Each undersigned representative of Settling Defendants, and the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party of this document.

39. Settling Defendants shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

## **XXI. EFFECTIVE DATE**

40. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

## **XXII. SURVIVAL OF CONSENT DECREE AND RETENTION OF JURISDICTION**

41. This Court retains jurisdiction over both the subject matter of this Consent Decree and over all signatory Parties to this Consent Decree for the duration of the performance of the terms and provisions of this Consent Decree.

## **XXIII. EXECUTION IN COUNTERPARTS**

42. This Decree may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## **XXIV. FINAL JUDGMENT**

43. Each Party shall bear its own court costs and attorneys' fees in connection with this matter, except to the extent that such costs are assessment costs.

44. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marathon Oil Company, et al. (S.D. Ind.).

FOR THE UNITED STATES OF AMERICA

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: 3/16/05

W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

Date: 3/17/05

ROBERT W. DARNELL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

SUSAN W. BROOKS  
United States Attorney  
Southern District of Indiana

Date: 3/23/05

THOMAS E. KIEPER  
Assistant United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, IN 46204

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marathon Oil Company, et al. (S.D. Ind.).

FOR THE STATE OF INDIANA

INDIANA DEPARTMENT OF NATURAL RESOURCES

Date: 3-2-05

\_\_\_\_\_  
JOHN DAVIS  
Deputy Director  
Indiana Department of Natural Resources  
DNR, Indiana Government Center South,  
Room 256C  
402 West Washington Street  
Indianapolis, IN 46204

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Date: 3/2/05

\_\_\_\_\_  
ELIZABETH ADMIRE  
Program Counsel Section Chief  
Office of Legal Counsel  
Indiana Department of Environmental  
Management  
100 N. Senate Avenue  
P.O. Box 6015  
Indianapolis, IN 46206-6015

(APPROVED AS TO FORM AND LEGALITY:)

STEVE CARTER  
Attorney General of Indiana

Date: 3-3-05

by: CHARLES J. TODD  
Chief Operating Officer  
Indiana Attorney General's Office  
Indiana Government Center South  
402 West Washington Street. Fifth  
Floor  
Indianapolis, IN 46204



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marathon Oil Company, et al. (S.D. Ind.).

Date: 2-1-05

Signature



Typed Name: Daniel J. Sullenbarger

Title: Vice President, Health Environment and Safety

Address: Marathon Oil Company

5555 San Felipe Street

Houston, Texas 77056-2799

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Edward A. Strenkowski

Title: Senior Counsel, Law-Litigation, HR & Environment

Address: Marathon Oil Company

5555 San Felipe Street

Houston, Texas 77056-2799

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Marathon Oil Company, et al. (S.D. Ind.).

Date: 1/25/05

Signature



Typed Name: Donald P. Bozell

Title: President

Address: Marathon Ashland Pipeline LLC

539 South Main Street

Findlay, Ohio 45840

\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: J. Michael Wilder

Title: Secretary

Address: Marathon Ashland Pipeline LLC

539 South Main Street

Findlay, Ohio 45840

\_\_\_\_\_

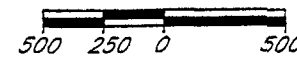
# **APPENDIX A**

## **Parcel I**

Those portions of the East half of Section 22 and the Northwest quarter of Section 23, all in – Township 14 North - Range 8 West of the second principal meridian, Parke County, Indiana more particularly described as follows:

Considering the East-West centerline of said Section 22 as bearing South 89 degrees 23 minutes 42 seconds West with all bearings contained herein relative thereto.

BEGINNING at the East quarter corner of said Section 22 and the West quarter corner of said Section 23, monumented by a T-post; thence on and along the East-West centerline of said Section 23, North 89 degrees 36 minutes 44 seconds East 537.24 feet to a 5/8 inch rebar with cap (herein called "monument") at the Southeast corner of that certain parcel of land described in deed recorded in Book 154, Page 234 records of said county; thence on and along the East line of said certain parcel, North 00 degrees 07 minutes 21 seconds West 681.25 feet to the centerline of Raccoon Creek; thence on and along said centerline the following courses and distances; South 88 degrees 57 minutes 25 seconds West 111.46 feet; thence South 17 degrees 39 minutes 26 seconds West 387.97 feet; thence South 55 degrees 35 minutes 27 seconds West 371.55 feet to the West line of said Northwest quarter; thence continuing on and along said centerline, South 73 degrees 56 minutes 32 seconds West 80.20 feet; thence North 67 degrees 03 minutes 28 seconds West 430.00 feet; thence North 76 degrees 33 minutes 28 seconds West 475.00 feet; thence South 63 degrees 56 minutes 32 seconds West 145.00 feet; thence South 34 degrees 26 minutes 32 seconds West 110.00 feet; thence South 64 degrees 56 minutes 32 seconds West 90.00 feet; thence South 87 degrees 26 minutes 32 seconds West 665.00 feet; thence South 74 degrees 26 minutes 32 seconds West 370.00 feet; thence North 74 degrees 33 minutes 28 seconds West 332.73 feet; thence North 20 degrees 38 minutes 44 seconds West 291.87 feet; thence North 06 degrees 59 minutes 30 seconds West 259.30 feet to a point on the North-South centerline of said Section 22; thence on and along said centerline South 00 degrees 00 minutes 00 seconds 2234.40 feet to a monument on the Westerly right-of-way of an abandoned railroad; thence on and along said Westerly right-of-way South 57 degrees 54 minutes 58 seconds East 113.34 feet to a monument; thence South 44 degrees 22 minutes 45 seconds East 388.84 feet to a monument; thence South 40 degrees 05 minutes 46 seconds East 478.48 feet to monument on the Southerly line of that certain parcel of land described in deed recorded in Book 154, Page 235 records of said county; thence on and along the South line of said certain parcel North 89 degrees 23 minutes 42 seconds East 203.75 feet to a monument at the Southwest corner of that certain parcel of land described in deed recorded in Book 169, Page 232 records of said county; thence on and along said West line parallel with said North-South centerline North 00 degrees 00 minutes 00 seconds 2260.63 feet to a monument on the East-West centerline of said Section 22; thence on and along said centerline North 89 degrees 23 minutes 42 seconds East 1805.10 feet to the Point of Beginning. The above described parcel contains 56.30 acres.



Scale: 1" = 500'

### LEGEND

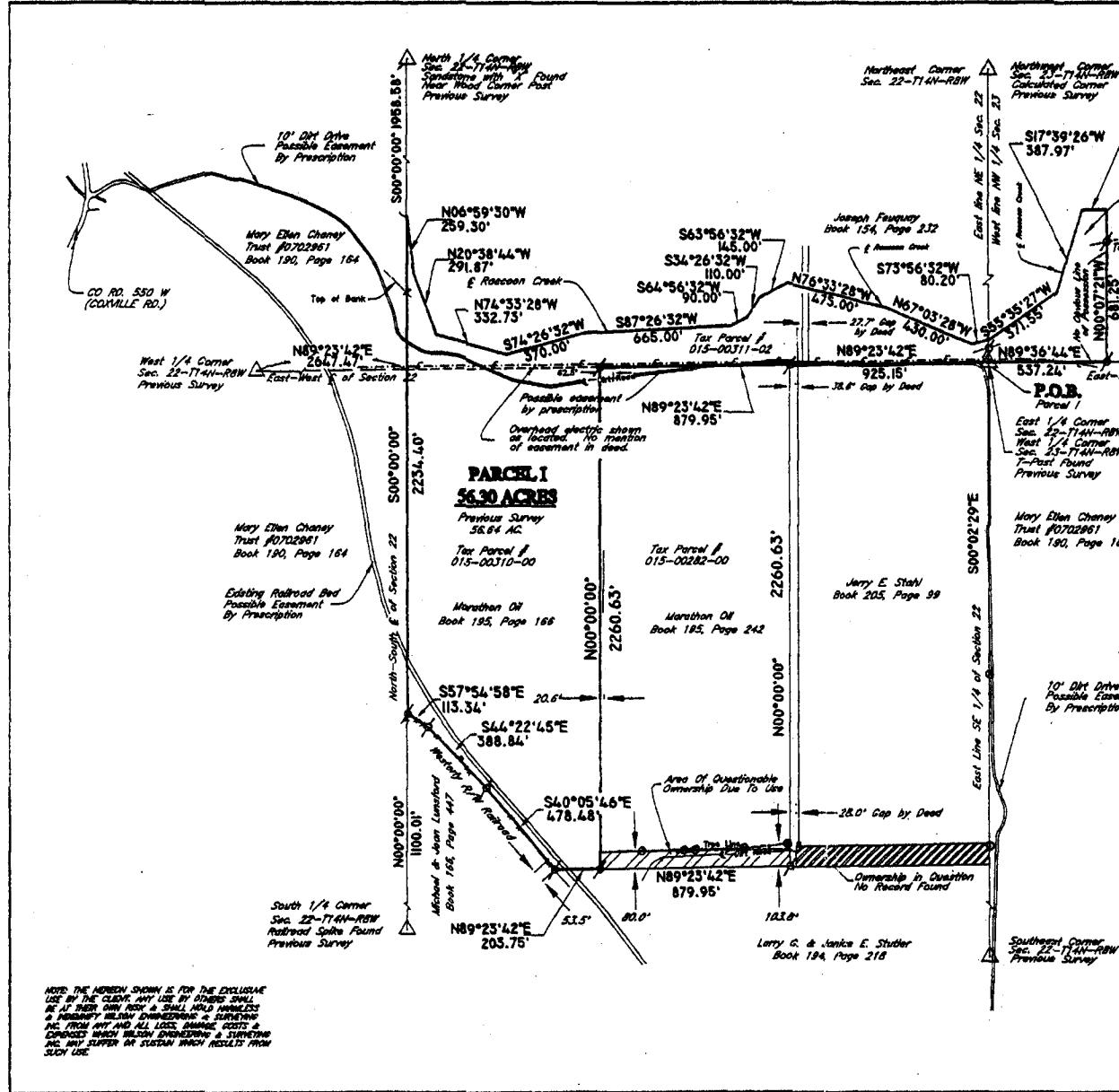
- △ SECTION CORNER
- 5/8" REBAR W/YELLOW CAP  
W.E.S.I. - #S-0225 SET
- REBAR FOUND AS PER  
PREVIOUS SURVEY
- IRON PIPE FOUND
- X---X--- FENCE LINE

### CERTIFICATE OF SURVEY

I, Ben H. Wilson, do hereby certify that the hereon shown was surveyed under my supervision on January 16, 2003 and is true and correct to the best of my belief and knowledge.

*Ben H. Wilson*  
Ben H. Wilson P.L.S. S-0225

SHEET 1 OF 4



NOTE: THE HEREON SHOWN IS FOR THE EXCLUSIVE USE OF THE CLIENT. ANY USE BY OTHERS SHALL BE AT THEIR OWN RISK & SHALL HOLD HARMLESS & INDemnIFY WILSON ENGINEERING & SURVEYING, INC. FROM ANY AND ALL LOSSES, DAMAGES, COSTS & EXPENSES WHICH WILSON ENGINEERING & SURVEYING, INC. MAY SUFFER OR SUFFER WHICH RESULT FROM SUCH USE.

	PROJECT	PT. SEC. 22 & PT. SEC. 23 ALL IN T14N-R8W - PARKE CO., IN.	
	DATE	01-16-03	CLIENT
	JOB NO.	03-01-2002	MARATHON OIL COMPANY
	DRAWN BY	DD	WILSON ENGINEERING & SURVEYING, INC.
	CHECKED BY	BHW	Greensboro (765) 653-7771 Rockville (765) 548-7707 (765) 653-7760 Fax

## **Parcel II**

That portion of the Southeast quarter of Section 22 – Township 14 North – Range 8 West of the second principal meridian, Parke County, Indiana, more particularly described as follows:

Considering the East-West centerline of said Section 22 as bearing South 89 degrees 23 minutes 42 seconds West with all bearings contained herein relative thereto.

Commencing at the East quarter corner of said Section 22, monumented by a T-post; thence on and along the East-West centerline of said Section 22, South 89 degrees 23 minutes 42 seconds West 925.15 feet to a 5/8 inch rebar with cap (herein called "monument"), at the Northeast corner of that certain parcel of land described in deed recorded in Book 169, page 232 records of said county, same being the POINT OF BEGINNING; thence on and along the East line of said certain parcel parallel with the North-south centerline of said Section 22 South 00 degrees 00 minutes 00 seconds 2260.63 feet to a monument at the Southeast corner of said certain parcel and on the North line of that certain parcel of land described in deed recorded in Book 180, Page 164 records of said county; thence on and along said North line, parallel with said East-West centerline, South 89 degrees 23 minutes 42 seconds West 879.95 feet to a monument at the Southeast corner of that certain parcel of land described in deed recorded in Book 154, Page 235 records of said county; thence on and along the East line of said certain parcel parallel with said North-South centerline North 00 degrees 00 minutes 00 seconds 2260.63 feet to a monument on said East-West centerline of said Section 22; thence on and along said East-West centerline North 89 degrees 23 minutes 42 seconds East 879.95 feet to the POINT OF BEGINNING. The above described parcel contains 45.66 acres.



500 250 0 500

Scale: 1" = 500'

# LEGEND

- △ SECTION CORNER
- 5/8" REBAR W/YELLOW CAP  
W.E.S.I. - #S-0225 SET
- REBAR FOUND AS PER  
PREVIOUS SURVEY
- IRON PIPE FOUND
- X---X--- FENCE LINE

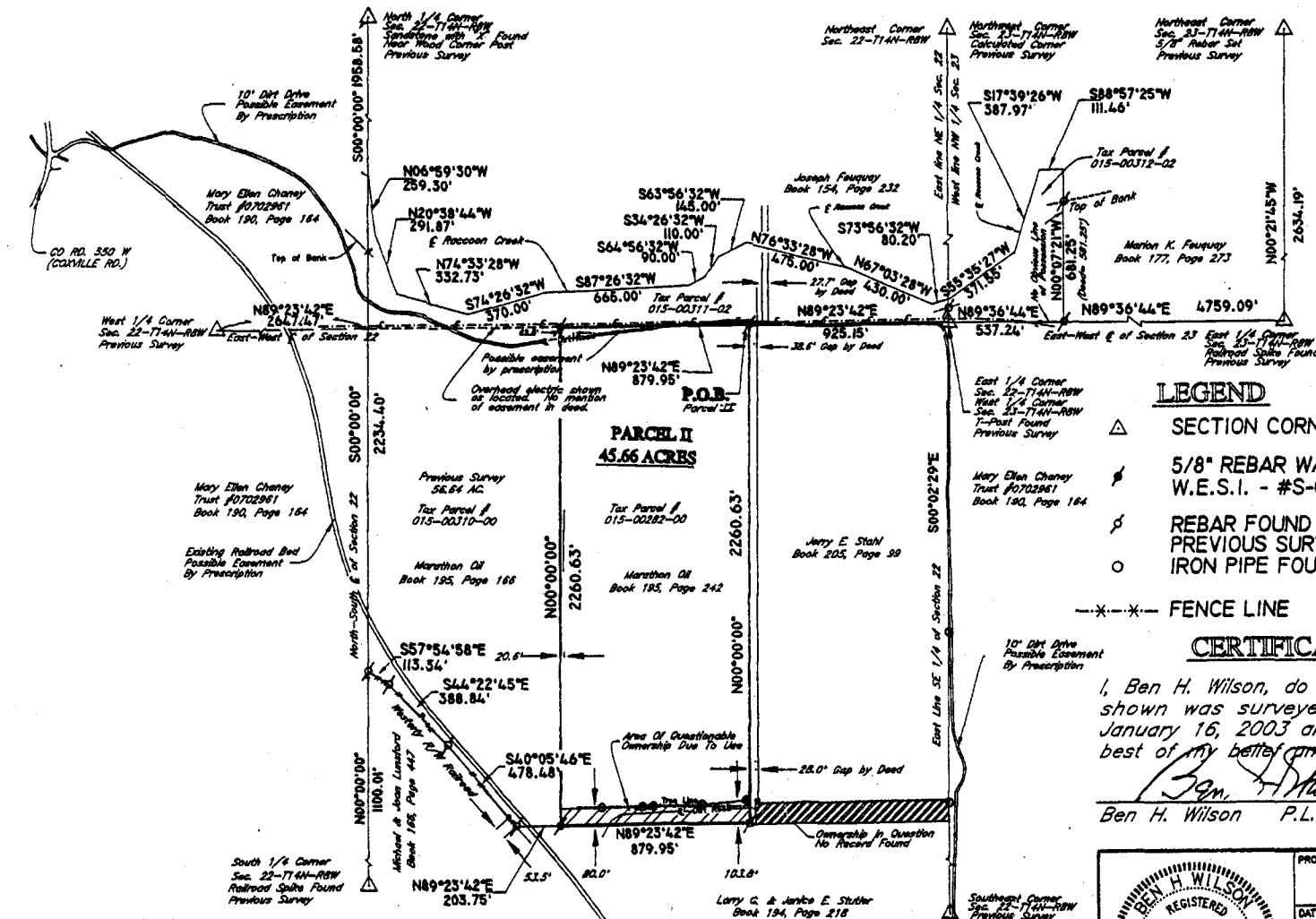
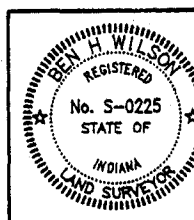
# CERTIFICATE OF SURVEY

I, Ben H. Wilson, do hereby certify that the hereon shown was surveyed under my supervision on January 16, 2003 and is true and correct to the best of my belief and knowledge.

*Ben H. Wilson*  
Ben H. Wilson P.L.S. S-0225

SHEET 1 OF 4

PROJECT		PT. SE 1/4 SEC. 22-T14N-R8W PARKE CO., IN.	
DATE	01-16-03	CLIENT	MARATHON OIL COMPANY
JOB NO.	03-01-2002	WILSON ENGINEERING & SURVEYING, INC.	
DRAWN BY	DD	Greencastle	Rockville
CHECKED BY	BHW	(765) 653-7771	(765) 548-7707
		(765) 653-7760 Fax	



NOTE: THE HEREON SHOWN IS FOR THE EXCLUSIVE USE OF THE CLIENT. ANY USE BY OTHERS SHALL BE AT THEIR OWN RISK & SHALL BE WITHOUT WARRANTY. WILSON ENGINEERING & SURVEYING, INC. FROM ANY AND ALL LOSS, DAMAGE, COSTS & EXPENSES WHICH MAY BE INCURRED BY ANY PARTY IN ANY MANNER WHICH RESULTS FROM SUCH USE.